

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DENNIS J. BOLOGNA, d/b/a/
BAUMAN's PLUMBING & HEATING,

Plaintiff,

v.

CITY OF ST. MARY's, *et al.*,

Defendants.

Civil Action No. 09-32 Erie

MEMORANDUM ORDER

This civil action was filed in state court and removed to this Court on February 13, 2009. The matter was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. A suggestion of Plaintiff's death [11] was filed on August 11, 2009 and, on October 14, 2009, Defense counsel served an Amended Certificate of Service for Statement Noting a Party's Death [12], indicating that service of same had been made on the Plaintiff's next of kin. Defendants subsequently filed a motion to dismiss for lack of prosecution [13] on February 15, 2010.

Judge Baxter's Report and Recommendation, filed on February 24, 2010 [14], recommends that the instant civil action be dismissed for failure to prosecute. In particular, the Magistrate Judge notes that more than ninety (90) days have passed since Plaintiff's next of kin were served on October 14, 2009 with the statement noting his death, and no motion for substitution of the deceased party has been filed pursuant to Fed. R. Civ. P. 25(a) by the Plaintiff's successor(s) or representative(s). No objections have been filed to date as to the Magistrate Judge's Report and Recommendation.

After de novo review of the petition and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 6th day of April, 2010;

IT IS ORDERED that the Defendants' motion to dismiss [13] be, and hereby is, GRANTED, and the instant civil action be, and hereby is, DISMISSED pursuant to Fed. R. Civ. P. 25(a)(1) for failure to prosecute.

The Report and Recommendation of Magistrate Judge Baxter, filed on February 24, 2010 [14], is adopted as the opinion of the Court.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN
United States District Judge

cc: All parties of record.
U.S. Magistrate Judge Susan Paradise Baxter